

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Civil Revision No.25 of 2016

Sunil Kumar Jaiswal, S/o Sri Laxmi Prasad Jaiswal, R/o
Jora Mandir Road, Near Bye Pass, P.O. + P.S. - Chas,
District - Bokaro **Petitioner**

Versus

Suraj Bhan Thakur, S/o Late Narsingh Thakur, R/o Jora
Mandir Road, Near Bye Pass, P.O. + P.S. - Chas, District -
Bokaro **Respondent**

CORAM: HON'BLE MR. JUSTICE AMITAV K. GUPTA

For the Petitioner : Mr. Sudhir Kr. Sharma, Advocate
Mr. Munna Lal Yadav, Advocate
For the Respondent : Mr. Pandey Neeraj Rai, Advocate
Mr. Rohit Ranjan Sinha, Advocate

11/Dated: 30th May, 2017

1. This revision is directed against the judgment dated 08.03.2016, passed in Title (E) Suit No.04/2012 by the learned Civil Judge (Junior Division), Bokaro decreeing the suit of the plaintiff and directing the defendant/ petitioner to vacate the suit premises of the plaintiff/ respondent within 30 days.

2. The petitioner and respondent/ O.P were arrayed as defendant and plaintiff in the court below hence for the sake of convenience they shall be referred to as defendant and plaintiff.

3. The plaintiff instituted the suit for eviction of the defendant from the suit premises comprising of shops nos.1 & 2. The plaintiff pleaded that after retirement from service on 28.02.2009 he requires the suit premises for starting his own business. He had requested the defendant to vacate the suit premises in November, 2011, and granted three months time, but the defendant failed to vacate the shops. Whereafter, the plaintiff sent a notice dated 13.03.2012 for vacating the suit premises, but the defendant in his reply

dated 30.03.2012 refused to vacate on false and vexatious ground. Consequent thereto, the suit was instituted under **Section 11 (1) (c)** of the ***Jharkhand Buildings (Lease, Rent & Eviction) Control Act, 2011*** (here-in-after to be referred to as the *JBC Act* for short).

The defendant appeared and filed his written statement admitting that he was a tenant of the plaintiff. He admitted that he has a two storied *pucca* building situated at the distance of 120 ft. from the suit premises. It is admitted that the plaintiff has retired from the service of the Bokaro Steel Plant and resides on the upper floor of the suit premises. The defendant in para – 5 of his written statement admitted that the plaintiff required the suit premises for his personal occupation and at the same time it was pleaded that the requirement is malafide engineered or projected to serve the malafide intention of plaintiff who wants to oust the defendant from suit premises on account of non-fulfillment of his illegal demand of exorbitant rent. It is pleaded that as per law the landlord can not realize money by way of advance (*salami*) exceeding one month's rent, but the plaintiff had forced the defendant to pay rent of Rs.20,000/- as advance. The plaintiff increased rent from Rs.900/- to 1500/- under threat of evicting the defendant and he had realized rent till September, 2010 and the defendant was also forced to pay rent of Rs.35,000/- as *pagri*. It is pleaded that the plaintiff again on threat of eviction compelled the defendant to enhance the rent from 1550/- to 1750/- and a time bound agreement of tenancy was sought to be executed, but the defendant did not sign since the agreement stipulated that the tenancy for 11 months would commence from 23.09.2010

and thereafter if cordial relationship was maintained then by mutual consent the tenancy would be extended further.

It is argued that there was no personal necessity of the plaintiff who is commercially sound and his entire family is well settled. It is stated that he is a person of old age and he requires rest and he has got no planning for business nor has the plaintiff disclosed the nature of business or what was the necessity for doing the business. It was pleaded that for starting a business there is competition and it requires hard work both mental and physical. That the plaintiff being a retired person was not capable of doing such stressful work moreover he had no experience of business, hence, the requirement was not bonafide. That in fact the wish and desire of the plaintiff cannot be termed as genuine requirement for starting the business.

It is pleaded that the plaintiff is in the habit of enhancing the rent arbitrarily and he has forced the defendant time and again to pay enhanced rent. That the building is three storied building having rooms on ground floor and the first floor of the building are used for commercial purposes. That one unit of two rooms on first floor and one room by the side of stairs are vacant and the front side of second floor is also vacant so if the plaintiff has any necessity he can start the business in the said vacant rooms. On amendment the defendant pleaded that on the back of the suit premises one Mr. Sabiruddin the proprietor of City Electronics had taken two rooms measuring 10' x 10' and 20'x15' for business purpose which has been lying vacant and unused.

On the above grounds, it is pleaded that the plaintiff's

requirement of suit premises is not bonafide and the suit is fit to be dismissed.

On the pleadings of the parties, the trial court framed as many as seven issues of which issues Nos.V, VI & VII as hereunder :-

V. Whether plaintiff is entitled for a decree for eviction of the defendant from the suit premises mention in the Schedule 'B' of the plaint ?

VI. Whether there is any bonafide personal necessity of the suit premises to the plaintiff ?

VII. Whether the necessity of the plaintiff be met if partial eviction of suit premises is allowed?

are relevant for adjudication in the present revision.

Both the parties adduced oral and documentary evidence. On consideration of the evidence adduced by the parties, the trial court has decreed the suit and directed the defendant to vacate the suit premises within 30 days, hence, the present revision.

4. Mr. S. K. Sharma, learned counsel for the revisionist while assailing the impugned judgment has submitted that the court below has failed to appreciate that there is no evidence on record to establish that the need of the landlord was genuine and bonafide. It is contended by the learned counsel that the plaintiff has been examined as P.W. - 3 and in para - 67 of his cross-examination, he has admitted that he has not mentioned as to what business he wants to start rather he would think about the nature of business when vacant possession of suit premises are handed over to him.

Learned counsel has referred to the deposition of P.W. - 2, who in para - 13, has admitted that there are two other shops which are lying vacant apart from the suit premises.

It is argued by the learned counsel that from the evidence of plaintiff and his witnesses it is established that there is no bonafide requirement rather it is merely a desire and such desire cannot be a ground for decreeing the suit in favour of the plaintiff.

In support of his contention, learned counsel has relied on the decision in the case of ***Ratanlal Baid Vs. Sohanlal Saha*** reported in ***(1998) 2 BLJR 1836*** and submitted that the Hon'ble Single Judge of the Patna High Court has held in para - 13 of the said judgment that the term bonafide represents something more than a desire or wish to occupy. It has been held that three months prior to the institution of suit the plaintiff had let out the identical accommodation to another person though he required the suitable place for opening of the shop, hence, it was held that requirement was not bonafide. It is contended by the learned counsel that evidence of plaintiff and P.Ws. suggests that there are premises which are lying vacant, hence, the requirement is not bonafide.

Learned counsel has also relied on the decision in the case of ***Sumitra Devi @ Suminta Devi & Anr. Vs. Syed Sayauddin Ashraf @ Sayad***, reported in ***2013 (1) BBCJ 161*** and submitted that the Hon'ble Judge of the Patna High Court has held that it is well settled proposition of law that the plaintiff is only required to prove the necessity to be reasonable and in good faith and mere desire is not sufficient. Learned counsel while relying on the judgment

reported in **1984 0 BLJR 415** has submitted that in the said case some of the shops had fallen vacant during the pendency of the suit and the Hon'ble Patna High Court has held that in such circumstances the question of personal necessity of the plaintiff does not arise as he has other vacant premises to occupy.

It is argued that the evidence of the plaintiff and the witnesses do not make out a case that there is genuine and bonafide requirement of the suit premises by the plaintiff and the facts of the decisions are squarely applicable to the instant case

5. Per contra, Mr. Pandey Neeraj Rai, learned counsel appearing on behalf of the respondent/ plaintiff has argued that that trial court has discussed the entire evidence and pleadings of the parties and also taken note of the fact that the defendant in para - 5 of his written statement has admitted that the suit premises are required bonafide by the plaintiff. It is argued by the learned counsel while relying on the decision reported in **AIR 1999 SC 1441**, that the defendant has not appeared in the court below to depose or to support his pleadings that the plaintiff had instituted the suit with an ulterior motive or to realize hefty amount of money as advance or *pagri*. That the abstention of the defendant as a witness led to drawing of adverse inference by the court below and the grounds raised by the defendant are question of facts which have been extensively discussed by the trial court. It is argued that the plaintiff has been able to establish that he is in need of the suit premises for starting his business and when the need is there the requirement automatically falls.

It is contended by the learned counsel that the decisions relied on by the learned counsel for the defendant/petitioner are not applicable as in the said cases the suit premises had fallen vacant prior to institution of the suit. In the said decision the Hon'ble Court had not discussed ***Explanation II of 11(1) (c) of the JBC Act*** which has been elaborately discussed in the case of ***Savitri Sahay Vs. Sachidanand Prasad***, reported in ***(2003) 1 JLJR SC 171*** and relied upon by the learned trial court.

It is argued that the impugned judgment does not suffer from any illegality or infirmity warranting any interference by this Court.

6. Having heard learned counsels, it is well settled that the plaintiff has to stand on his own feet and he cannot take advantage of the weaknesses of defendant's case. Argument advanced by the learned counsel for the petitioner/defendant is that there is no bonafide or genuine requirement of the suit premises by the plaintiff/ respondent as there are other vacant premises lying, is not acceptable, because P.W. - 3 in paras – 51 & 57 of the cross-examination has admitted that suit premises in occupation of Sabiruddin was not suitable for business, as it was used for purpose for a godown and the dimensions of the shops were also not suitable for carrying out the business. The plaintiff has specifically stated that he has retired from service and he required the suit premises for starting his own business and the fact that he has not discussed as to the nature of the business he wants to start is not very material as the same would be decided as and when the suit premises are made available to the plaintiff. The availability of the vacant suit

premises is condition precedent for starting of the business. Moreover, the fact that the defendant has not appeared and examined himself in the court below and mere pleading would not suffice to dislodge the case of the plaintiff when the suit premises are required for his bonafide use.

The law is settled that pleading is not a substitute of proof. The defendant pleaded that the plaintiff has instituted the suit with an intention to realize *pagri* and enhanced rent and it has been argued that in para - 45, P.W. - 3 has admitted to have realized Rs.35,000/- for two shops does not in any way disclose or indicate that it was realized and the defendant paid the said amount on threats of eviction. Moreover, Section 3 prohibits payment of any *salami* or *pagri* in excess of one month's rent. It is noticeable that the defendant has not examined himself to establish the plea that the instant suit had been filed by the plaintiff because the defendant did not meet the demand of payment to *pagri* or *salami* or the enhanced rent demanded by the plaintiff.

Once the plaintiff had discharged the burden that he needs the suit premises for starting a business, then the onus shifted upon the defendant to prove his case that the suit was instituted for realization of *salami* or advance money or *pagri*.

No plausible explanation or justification has been broughtforth by the defendant as to what prevented him from participating in the proceeding. The court below has taken note of the evidence of D.W. - 1 wherein he has admitted that the defendant has his own house in Joda Mandir and another house situated beside the road about 50 - 60 ft. away from the suit premises. The D.W. - 1 has stated

that he did not have knowledge about the agreement entered into between the plaintiff and the defendant. D.W. - 2 has admitted in his cross-examination that he is an employee of defendant and the statement on affidavit was typed and prepared on the direction of the defendant. He admitted that defendant has his own house and building in the vicinity of the suit premises.

The fact that the plaintiff is commercially sound and his family is well settled and he has not mentioned the nature of the business cannot be a ground for discrediting the plaintiff's case that he requires the suit premises for his personal necessity.

The trial court has discussed the evidence in threadbare details and recorded its satisfaction that the plaintiff's requirement is bonafide and genuine and it is not merely a desire or wish. Moreover, in *Explanation II.*, of Section 11 (1) (c) of JBC Act, it is provided as follows :-

"Explanation II. - Where there are two or more premises let out by the landlord, it will be for the landlord to choose which one would be preferable to him and the tenant or tenants shall not be allowed to question such preference".

The said explanation has been elaborately discussed in the case of ***Savitri Sahay (Supra)*** and it has been held that it is for the landlord to choose which one of the premises is preferable to him/ her and the tenant cannot dictate the choice of the premises to the landlord. It is well settled that subsequent development will not be a ground to disbelieve the case of the plaintiff as the personal necessity is required to be determined on the date the suit is instituted. The court

below has discussed the aspect of the partial eviction and the plaintiff has specifically pleaded that he requires the entire suit premises and the defendant has not denied the same in his written statement. Nor the defendant has anywhere asserted that he is agreeable for partial eviction.

7. Thus, in view of the material evidence on record and settled proposition, it is held that the impugned order does not suffer from any illegality or infirmity.

In the result, revision stands dismissed.

(AMITAV K. GUPTA, J.)

Chandan/-